



United States Department of the Interior

FISH AND WILDLIFE SERVICE
Sacramento Fish and Wildlife Office
2800 Cottage Way, Room W-2605
Sacramento, California 95825-1846



In Reply Refer To:

81420-2009-TA-1164-1

Memorandum

To: Charles Jachens, Project Manager, Bureau of Reclamation, Mid-Pacific Regional Office, Sacramento, California

From: Kenneth Sanchez, Assistant Field Supervisor, Sacramento Fish and Wildlife Office, Sacramento, California

Subject: Request to Append Construction of Conveyance Features to Deliver Water to Gray Lodge Wildlife Area to the Programmatic Biological Opinion on Conveyance of Refuge Water Supply Project, West and East Sacramento Valley, California

This memorandum responds to your June 30, 2009, request that the U.S. Fish and Wildlife Service (Service) append construction of conveyance features to deliver water to Gray Lodge Wildlife Area (Gray Lodge) to the programmatic Biological Opinion on Conveyance of Refuge Water Supply Project, West and East Sacramento Valley, California (Opinion) (Service file 1-1-99-F-0015). The Bureau of Reclamation (Reclamation) requested that construction of the conveyance features be appended to the Opinion.

After reviewing the proposed construction activities at Gray Lodge and the Opinion, the Service concurs with appending the proposed construction to the Opinion because the work proposed at Gray Lodge is consistent with the parameters defined in the Opinion and the work is not likely to jeopardize the continued existence of the threatened giant garter snake (*Thamnophis gigas*) as long as the terms and conditions and compensation requirements contained in the Opinion are complied with. The procedures to be followed for appending projects to the Opinion are listed below.

This response is provided pursuant to section 7(a)(2) of the Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq.*) and in accordance with the regulations governing interagency consultations (50 CFR §402). This response is also in accordance with section 3404(c) of the Central Valley Project Improvement Act (CVPIA) and our November 2000 Programmatic Opinion on Implementation of the CVPIA and Continued Operation and Maintenance of the CVP (Service File No. 1-1-98-F-0124).

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The 1999 Programmatic Opinion authorized the incidental take of giant garter snakes in the form of up to 5.5 acres each of aquatic and upland of suitable giant garter snake habitat. As indicated in your request of June 30, 2009, the number of modifications to the water delivery system is expected to increase from 25 to 56, and the acreage affected by the construction will increase to 22 acres (11 acres of aquatic and 11 acres of upland). These habitats will either be temporarily or permanently disturbed during construction activities and are to be mitigated in accordance with the *Mitigation Criteria for Restoration and/or Replacement of Giant Garter Snake Habitat* (Criteria) included in the 1999 Programmatic Opinion. No critical habitat has been designated for this species, therefore, none will be affected.

As identified in the 1999 Programmatic Opinion, the following procedure will be used to authorize take for structural modifications, using a programmatic approach under the biological opinion:

1. Reclamation will submit a letter requesting that the proposed activity be appended to this programmatic biological opinion and provide the Service with the following:
 - a. A 1"=20' site plan with an overlay showing habitat types at the site (open water, marsh, rice field, disturbed upland, etc.), and differentiating areas to be temporarily and permanently impacted.
 - b. Information on the number of acres of habitat to be temporarily and permanently impacted for each habitat type.
 - c. A project description, including details related to the types of disturbance, project timing, and a discussion as to how impacts are minimized to the maximum extent practicable relative to the *Services Standard Avoidance and Minimization Measures During Construction Activities in Giant Garter Snake Habitat* (Appendix B).
2. The Service will review the information provided to determine whether the activity meets the criteria for being appended to this biological opinion, or whether a separate biological opinion is necessary.
3. If the Service determines that the activity is appropriate for inclusion under this opinion, the Service will provide a letter appending the activity to this opinion.

Permanent habitat loss shall be compensated at a 3 : 1 ratio and meet the compensation measures listed in the Criteria. The preserved habitat shall include both upland and aquatic habitat components, at a ratio of 2 acres upland habitat to each acre of aquatic habitat. The site to be preserved for compensation shall be subject to Service approval. On-site habitat creation can be counted toward the compensation requirement, at the Service's discretion, if it can be demonstrated that the habitat will be successfully created, will have long-term value for the giant

garter snake, and will be preserved in perpetuity. All aquatic and upland compensation areas provided for the giant garter snake shall be protected in perpetuity by a Service-approved conservation easement or similarly protective covenants in the deed. The conservation easement shall be recorded at the county recording office prior to any ground breaking for major modifications. The minor structural modifications may proceed prior to recordation of a conservation easement, but the entire preservation acreage for compensation of all minor and major structural modifications must be in place, with recorded conservation easement, prior to any ground breaking associated with any of the major structural modifications. The easement/deed shall be provided to the Service within 30 days after recordation. Standard examples of deed restrictions and conservation easements are available from the Service upon request.

If you have any questions or concerns about this consultation or the consultation process in general, please contact Jana Affonso or Mike Welsh of my staff at the letterhead address or at (916) 414-6600.